



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:)
Grot, et al.)
Serial No.: 10/729,508) Art Unit:
Filed: December 5, 2003) Examiner:
For: OPTICAL WAVELENGTH STANDARD)
AND OPTICAL WAVELENGTH)
CALIBRATION SYSTEM AND METHOD)

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. §1.47(a)

Commissioner for Patents
Mail Stop: Patent Application
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a full and timely response to the Decision Refusing Status Under 37 CFR 1.47(a) ("Decision").

In the Decision, the U.S. Patent & Trademark Office (USPTO) indicated that the Petition under 37 CFR 1.47(a) submitted by Applicant on December 5, 2003, was insufficient because it failed to establish that a copy of the application had been sent to the inventor. 37 CFR 1.47(a) requires that a petitioner show that "an inventor refuses to join in an application for patent or cannot be found or reached after diligent effort." (Emphasis added). Nowhere in 37 CFR 1.47(a) is there a requirement for a petitioner to establish that a copy of the application was mailed to the inventor in order to establish that he or she "cannot be found or reached after diligent effort." Moreover, Applicant asserts that the Petition of December 5, 2003, sufficiently shows that, as of the filing date of the Petition, the inventor, Thomas Mikes, could not be found or reached after diligent effort. Thus, the denial of Applicant's petition is improper.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope, with sufficient postage, addressed to: Commissioner for Patents, Mail Stop: Patent Application, P.O. Box 1450, Alexandria, VA, 22313-1450 on

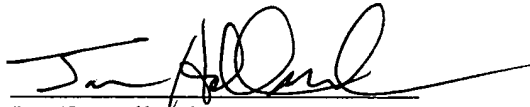
5-17-04
Signature: Thomas R. East

Nevertheless, Applicant submits herewith a Declaration establishing that the inventor, Thomas Mikes, was sent a copy of the patent application and a declaration for patent application but failed to return such items to Applicant. Applicant respectfully asserts that the foregoing Declaration along with the Declaration submitted in support of Applicant's Petition on December 5, 2003, adequately show that the inventor, Thomas Mikes, is uncooperative and "refuses to join in an application for patent or cannot be found or reached after diligent effort." As of the date of the execution of this paper, the last known address of the foregoing inventor is:

12929 Mizner Way
Wellington FL 33414.

Applicant respectfully requests that the partially signed Declaration submitted to the USPTO on December 5, 2004, for the instant application be accepted by the USPTO without the signature of Thomas Mikes pursuant to 37 C.F.R. §1.47(a).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jon E. Holland", written over a horizontal line.

Jon E. Holland
Reg. No. 41,077

**Thomas, Kayden, Horstemeyer
& Risley, L.L.P.**
100 Galleria Parkway
Suite 1750
Atlanta, Georgia 30339



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DECLARATION BY JON HOLLAND IN SUPPORT OF PETITION

UNDER 37 C.F.R. §1.47

Commissioner for Patents
Mail Stop: Patent Application
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1.

I, Jon Holland, am an attorney representing Agilent Technologies ("Agilent") in the above-identified matter. On December 5, 2003, I executed a Declaration setting forth facts showing that an inventor, Thomas Mikes, refuses to join in the instant application or cannot be found or reached after diligent effort. This Declaration was submitted, along with a Petition to Accept Declaration Without Inventor's Signature Pursuant to 37 C.F.R. §1.47, to the United State Patent & Trademark Office (USPTO) on December 5, 2003. However, the (USPTO) denied the Petition indicating that the Petition failed to provide sufficient proof that a copy of the application was sent to the inventor. Since receiving notice of the USTPO's decision to deny the Petition, I successfully contacted Mr. Mikes, who verbally agreed to sign and return a declaration for patent application. He also provided an address to which I could send the declaration for patent application. On or about April 20, 2004, I sent Mr. Mikes a complete

copy of the above-identified patent application, including the claims and drawings, to the address specified by him. A copy of the letter sent to Mr. Mikes is attached as Exhibit A. After sending the letter, Mr. Mikes indicated to me in a telephone conversation that he had received the application and declaration for patent application, and during this telephone conversation, I received assurances from Mr. Mikes that I would receive a signed copy of the declaration for patent application by May 17, 2004. However, as of the close of the business day on May 17, 2004, I have yet to receive a signed copy of the declaration for patent application from Mr. Mikes.

2.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,



Jon E. Holland
Reg. No. 41,077

Thomas, Kayden, Horstemeyer
& Risley, L.L.P.
100 Galleria Parkway
Suite 1750
Atlanta, Georgia 30339

Date: 5/17/04



TKHR

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.

ATTORNEYS AT LAW

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Jon E. Holland
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April 20, 2004

Thomas Mikes
12929 Mizner Way
Wellington, FL 33414

RE: Non-Provisional Patent Application
Entitled: Optical Wavelength Standard and Optical Wavelength Calibration System and Method
Serial No.: 10/729,508; Filed: December 5, 2003
Our Reference No.: 50110.1390; Agilent Reference No.: 10004289-1

Dear Tom:

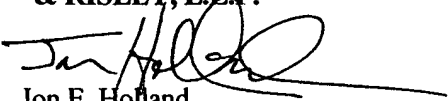
Enclosed for execution **IN BLUE INK** by you is a Declaration for Utility or Design Patent Application and an Assignment for the above-referenced application. Immediately following the enclosed Declaration is a copy of the above-referenced patent application to which the Declaration pertains.

After execution, please forward to me the enclosed Declaration and Assignment. Note that the Assignment must be notarized. Once we receive the executed Declaration and Assignment from you, we will file these documents with the U.S. Patent & Trademark Office.

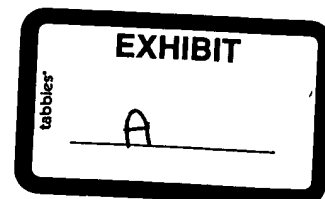
Do not hesitate to contact me if you have any questions.

Very truly yours,

**THOMAS, KAYDEN, HORSTEMEYER,
& RISLEY, L.L.P.**


Jon E. Holland

JEH/sle
Enclosures



INTERNATIONAL PATENT, TRADEMARK AND COPYRIGHT LAW AND RELATED LITIGATION

Huntsville, Alabama

Atlanta, Georgia